Supreme Court, U.S.
FILED

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No.

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1997

WILLIAM H. BRANDT
Petitioner

v.

NORM MALENG & Deputies

JOAN EASTON & Court Clerks
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Do judicial employees have immunity from civil suit for gross or extreme negligence?

Do judicial employees have immunity from civil suit for violations of criminal law?

Was Brandt unfairly excluded from access to the federal court after having been denied relief in state court?

Brandt seeks review of the unpublished memorandum in the Ninth Circuit case No. 97-35917 filed June 12, 1998 under your Rule 10 © pursuant to 28 USC s1254 (1). Your authority is U.S. Constitution, Amendment XIV and 42 USC s1983.

Brandt was falsely accused of two misdemeanors. The prosecutor agreed to dismiss the case. When Brandt arrived in court, a judge's clerk told Brandt the case had already been dismissed and advised Brandt to leave. Months later, Brandt was arrested for not appearing.

The audiotape record shows that the prosecutor did tell the judge that the State was "unable to proceed." But Brandt's conversation with the clerk was deleted. At the end of the hearing, another prosecutor asked for Brandt's arrest in response to the judge's question even though that prosecutor didn't know the answer.

Following his release on bail, Brandt tried to get the mistake corrected. The court clerks organized a criminal conspiracy to cover up the error. Another prosecutor attempted to extort "court costs" from Brandt. Yet another prosecutor faked a prosecution to force Brandt to abandon his civil claim.

After the state court gave its own employees immunity from civil suit, Brandt sued in federal court which then denied access based on res judicata.

The prosecutor who asked for Brandt's arrest knew that she didn't know the answer to the judge's question and callously didn't even bother to check. The court clerks not only screwed Brandt, they manipulated the judges to point sole blame at the prosecutors. The sheer magnitude of carelessness amounts to extreme negligence, and the coverup was just plain criminal.

The purpose of immunity for civil servants is to shield society from unlimited liability for honest mistakes. The balance requires that citizens be protected from malfeasance. Brandt wants to apply the same legal standards to judicial employees that already apply to the other branches of government.

The purpose of the criminal justice system is to make the guilty pay for offenses against society. Making the innocent pay is the crime of extortion. Here, the prosecutors only wanted the revenue without bothering to establish the guilt of the defendant.

William H. Brandt

U.S. District Court
Western District of Washington at Seattle

Case No. C97-795D Report and Recommendation

Introduction and Summary Conclusion

Plaintiff William H. Brandt, appearing pro se, filed this action against the King County Prosecutor, unnamed deputy prosecutors, and court clerks for their actions in filing and then dismissing a criminal case against plaintiff. Plaintiff alleges that the practice of "dismissal with costs" of criminal matters amounts to extortion. Dkt. #1. Defendants have moved for summary judgment on the basis that this suit is barred by the doctrine of res judicata. Plaintiff concedes that this action is "substantially the same" as his prior state court actions, but argues that the state court acted wrongfully to shield state employees from suit, and he should now be allowed to sue here. After careful consideration of the record and the memoranda and exhibits of the parties, I conclude that defendants' motion should be granted, and the complaint and action dismissed.

DISCUSSION

The facts of this matter were set forth by the Washington State Court of Appeals, Division One. As the issue before that court was the immunity of the defendants, plaintiff's allegations were accepted as true for the limited purpose of determing immunity.

> Brandt was charged in King County District Court with one count of third degree malicious mischief and one count of second degree trespass. He pled not guilty. At a readiness hearing, a deputy prosecutor offered a plea bargain. Brandt refused, and the case was set for trial.
>
> The day before the first jury trial date, the deputy prosecutor offered to dismiss the case, but asked Brandt to pay court costs. He refused. The prosecutor told him that nonetheless she was going to move to dismiss.
>
> On the following day, Brandt appeared for trial, entering the courtroom 15 minutes after proceedings commenced. During a recess in the proceedings, Brandt approached the judge's clerk and asked if his case had been dismissed. She stated that it had and said he need not appear before the judge. Brandt then left. But eight months later,

two police officers arrested him on a warrant for failure to appear for trial. Brandt attempted to document his belief that the case had been dismissed and that the warrant was a mistake.

Brandt spoke with another deputy prosecutor before the second readiness hearing, who stated that the case had not been dismissed because Brandt left too early. The prosecutor said he would make the same offer to dismiss in exchange for court costs. At the second readiness hearing, a third deputy prosecuting attorney offered to dismiss the case in exchange for forfeiture of Brandt's one hundred dollars bail. He refused, and the case was again set for trial.

On the date set for jury trial, the court granted the State's motion to dismiss the charge with prejudice. The Court docket lists the reasons for dismissal as the age of The case and of the witnesses. Dkt. 7, Exhib. L.

On these facts, plaintiff filed at least four actions in state court, naming as defendants the judge, prosecutor and deputy prosecutors, as well as court clerks who were involved in the case. Brandt v. Saint Clair, No. 95-2-24734-2 SEA; Brandt v. Norm Maleng, et al. No. 95-2-26273-2 SEA; Brandt v. Norm Maleng, No. 95-2-24732-6 SEA; and Brandt v. Joan Easton, et al. No. 96-2-02951-3 SEA. Dkt. #7, Exhib. B, C, D, J. He voluntarily dismissed the suit against the judge; the others were dismissed by the state court on the basis that the prosecutor and court clerks were immune from suit. The above statement of facts is from the unpublished opinion of the Washington State Court of Appeals affirming the dismissal in Brandt v. Easton, et al No. 38523-2-1 Dkt. #7, Exhib. L. The dismissal was affirmed in a commissioner's ruling granting a motion on the merits. Brandt v. Norm Maleng, et al No. 37892-9-1 Dkt. #7, Exhib. I.

In each of these actions, plaintiff complained of improper actions by the defendants in handling his criminal matter and in dismissing his case "with costs." In each case, the court found that the defendants were immune from suit, and dismissed the action. Plaintiff apparently hopes for a different result here, but even it this Court were to reach the merits of the complaint, it would inevitably reach the same conclusion. The immunity of prosecutors and court clerks is well established in federal law as it is in the state law applied by the Washington courts. Imbler v. Pachtman, 424 U.S. 409, 427 (1976);

Cleavinger v. Saxner, 474 U.S.193, 200 (1985); Mullis v. United States Bankruptcy Court, 828 F.2d 1385, 1390 (9th Cir. 1987). However, this matter will not even be considered on the merits, because it is barred by the doctrine of res judicata.

Res judicata, or claim preclusion, is a broad doctrine that bars bringing claims that were previously litigated as well as some claims that were not actually litigated previously. Clements v. Airport Authority of Washoe County, 69 F. 3d 321, 327 (9th Cir. 1995). The general rule is that a plaintiff who has prosecuted one action against a defendant or defendants where (a) the claim in the second action is based on the same facts that were at issue in the first action; (2) the plaintiff seeks a remedy which is additional to or alternative to the one sought earlier; and, (c) the new claim is one that could have been joined in the first action. Dodd v. Hood River County, 59 F.3d 852, 862 (9th Cir. 1995).

The rule of claim preclusion applies to extinguish claims that could have been brought, as well as ones which were actually brought, when they arise out of the same "transactional nucleus" of facts, even though the plaintiff in the second action is prepared to assert grounds or theories of the case not presented in the first one. Constantini v. Trans World Airlines, 681 F.2d 1199, 1201-1202 (9th Cir.); cert. denied, 459 U.S. 1087 (1982). A state court judgment has the same preclusive effect in federal court that it would have in state court. 28 USC s1738; Allen v. McCurry, 449 U.S. 90 (1980).

The criteria to be applied by the court in determining whether a successive lawsuit should be barred are (1) whether rights or interests established in the prior judgment would be destroyed or impaired by maintenance of the second action; (2) whether substantially the same evidence would be presented in the two actions; (3) whether the two suits arise out of the same transactional nucleus of facts. Constantini, 681 F.2d. at 1201-1202. Of these criteria, the last is the most important. Id.

Here, plaintiff's federal action not only arises from the same transactional nucleus of facts, it asserts virtually the same cause of action as he advanced in state court. Plaintiff candidly admits this in opposing summary judgment, but argues that nevertheless "the

Doctrines of res judicata and collateral estoppel do not apply in this situation." Dkt. #13, p.s. This bare assertion is wholly insufficient to overcome the well-established rule that bars relitigation of his claims. No possible amendment can cure the fatal defects of this complaint.

Accordingly, defendants' motion for summary judgment should be granted, and the complaint and action dismissed. Proposed forms of order and judgment are attached.

DATED this 17th day of July, 1997.

S/ Philip K. Sweigert
U.S. Magistrate Judge

U.S. Court of Appeals 9th Circuit

Case No. 97-35917 MEMORANDUM
Submitted June 8, 1998 Before: Reinhardt, Thompson, and Leavy
Circuit Judges

William H. Brandt appeals pro se the district court's summary judgment for defendants in his action alleging violation of the Fourteenth Amendment. We have jurisdiction pursuant to 28 U.S.C. s 1291. We review de novo a dismissal based on res judicata, see Palomar Mobilehome Park Ass'n v. City of San Marcoa, 989 F.2d 362, 363 (9th Cir. 1993), and we affirm.

Federal courts are required to give state court judgment the same preclusive effect the judgment would be given by the courts of the state from which it emerged. See id. Because Brandt's federal action and his state court actions arose from the same nucleus of facts and involved the infringement of the same rights, we agree with the district court that res judicata bars Brandt's federal action. See Feminist Women's Health Center v. Codispoti, 63 F.3d 863, 867 (9th Cir. 1995) (citing Rains v. State, 100 Wash. 2d 660 (1983) (en banc).

AFFIRMED.